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FAUX TRIALS: Chris St. Hilaire, center, with Jury Impact colleagues Jeff Harrelson, left, Todd Fairbanks, Gareth Schweitzer and Tom Bernthal. Computer shows "juror" reactions.

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The 12 people assembled around the conference table unanimously agreed someone should pay for what happened to Todd O'Malley.

The 5-year old was gravely injured in a botched delivery, and his parents were suing.

The lawsuit said the boy's cerebral palsy was caused by a lack of oxygen during birth. Hospital nurses ignored warning signs during his mother's labor, the suit said, despite knowing hers was a high-risk pregnancy. Twelve hours into labor, her uterus ruptured. Her doctor, who wasn't there during labor, arrived after the mother had been prepped for an emergency Caesarean delivery.

A father of three voiced the group's consensus after listening to an hour of argument. "They should have had a doctor there," he said.

Chris St. Hilaire, a jury consultant from Orange County, listened intently from the darkened side of a one-way mirror spanning the length of the conference room. He leaned toward Michael Prangle, the Chicago attorney, who, in August, will be defending the Las Vegas hospital named in the parents' lawsuit.

"Now the question is," he said of the jury's sympathy for the parents, "can we get them back?"

In the next hour, the dozen mulled the best arguments in the hospital's defense — that the labor was routine until the mother's uterus ruptured, prompting the baby's quick delivery.

The final vote: 10 to 2 in favor of the defense. The young father who initially leaned toward the parents summed up his shifting support for the medical staff: "They really did everything they could."

With that, the pretend jurors went home, each with \$75 in his pocket. And Prangle would

receive a written report on the sessions, including detailed analyses of what worked and why, so he could better prepare for the coming trial.

Most court watchers know about jury consultants, the people brought in to help defense attorneys and prosecutors pick jurors most likely to be sympathetic to their side. Attorneys also hold mock trials, where they rehearse their case in front of a faux jury or prepare witnesses for going to court.

St. Hilaire's Cost Mesa company, Jury Impact, has adopted another strategy in trial preparation, by gathering the kinds of focus groups used by marketing experts to test new products and political messages. So far, the company's work has involved only civil cases.

The company assembles groups to sit as faux juries, listen to legal arguments and provide instant feedback so attorneys can sculpt the most effective way of presenting their cases in court.

The focus groups listen first to the opposition arguments, recording with hand-held electronic dials their reactions to what is most effective. The attorneys then put forward their best counter arguments, analyzing which hit the closest to home based on how the group reacts.

"The courtroom is the last place in America where you deliver a message before you test it," said St. Hilaire.

The idea to meld jury research with political packaging came from Costa Mesa attorney Todd Theodora, who worked with St. Hilaire as political director for the New Majority, a group of wealthy Republican moderates that formed in 1999.

Politicians live and die on their message, said Theodora, and "message is critical in trials, too."

"In reality, court cases are very close calls. They can turn

on one witness who speaks two or three sentences in the course of a two-month trial," said Theodora, who's had his share of high-profile cases. He has represented former White House intern Monica Lewinsky and is now defending Angels owner Arte Moreno's decision to rename the baseball team.

Theodora was the supervising attorney in a \$10-million lawsuit claiming that a California company wrongly fired one of its workers. Theodora asked St. Hilaire to put together a focus group so he could test his trial arguments.

Traditional jury consultants were good at assessing sociological factors such as "these kinds of jurors tend to think this way," he said, but they didn't tackle specific trial themes or why some arguments worked and others didn't. Mock trials allowed attorneys to rehearse their presentations, but rarely involved feedback from participants.

The focus group's conclusion for his wrongful-termination case: No matter what the argument, not enough test-case jurors could be swayed to sympathize with the defendant. So Theodora instead settled the case out of court.

In another case he brought to St. Hilaire, a series of focus groups uncovered that jurors couldn't focus on the merits of the case because they were distracted by the thick Tennessee drawl of the trial's main witness. So Theodora also settled that case before trial.

To best capture representative jurors, focus groups are held in the city where the trial is to take place. Focus-group jurors are drawn from the same pool — usually registered voters — used by the courts and match the demographics of representative juries. Each session lasts three hours. Participants are told they will be reviewing an upcoming case, then are given the best

arguments from each side.

Each session begins with participants giving opinions on general topics relating to the case. For example, during the Las Vegas session, group members discussed their opinions of doctors, nurses and hospitals.

Where the approach veers from traditional focus groups is in the presentation. St. Hilaire and his team tweak trial arguments as they are being presented, communicating with group facilitator Tom Bernthal by computer. The goal is to move the group as far as possible toward the opposing side of the case — and then determine what works best to bring it back.

Each participant is given a hand-held dial device to measure his or her response to an argument. The results are displayed as graphs on a computer screen on the other side of the glass.

Prangle said he used St. Hilaire's services three years ago at the insistence of his client, which owns hospitals across the country and was being sued for \$52 million. Prangle said he was skeptical, but was sold after observing the focus groups. Then he was grateful; the real jury sided with him.

He's used the team for a handful of trials since. "Something totally insignificant to me can carry a lot of weight with regular people," he said.

Oklahoma trial attorney Stephen Rodolf said he, too, was offended at first by what he thought was a group of political hacks showing up to do his work.

"I thought, I don't need an outside third party telling me how to make decisions," he said.

After the sessions were held, however, Rodolf changed direction on two critical aspects of the case and won at trial.

"There was not a day in the two-month trial that we were surprised," he said. "It's nice to have forewarning."

But such insights come at a price.

Jury Impact charges \$30,000 for a minimum of two focus groups, held on the same day. Fees can top \$200,000 for six days of focus groups for a complex case. As a result, the focus group technique is reserved for cases where defendants are exposed to large jury verdicts.

The company boasts its success. While some clients have chosen to settle their cases based on what they learned in the focus groups, all but one of the roughly 40 clients who have gone to trial has won over the jury, said St. Hilaire.

Like politics, the work is grueling. St. Hilaire and his team traveled to nine cities for 18 focus groups in the two weeks before Christmas, including Oklahoma City; Philadelphia; Houston; Washington, D.C. Miami; Las Vegas; Los Angeles; Nashua, N.H.; and McAllen, Texas.

As with politics, it's also a young business. St. Hilaire at 36, is the oldest. Bernthal, 31, is an Emmy-winning former producer for NBC News. The team includes Gareth Schweitzer, 27, a former White House radio correspondent who spent six weeks as an embedded journalist in Iraq, and Jeff Harrelson, 27, a former campaign staffer for Republican California gubernatorial candidate Bill Simon.

Another principal until last year was veteran Sacramento political consultant Tony Russo, who helped get the company launched. He left in late 2003 to become an executive vice president at the Irvine Co.

"No one was using the kinds of analytical tools we used in politics in a jury environment," Russo said. "We were sort of turning things upside down, [focusing on] what resonated with people rather than coming with the best legal arguments."

Where Focus Groups Hold Court

O.C. jury consultant uses business strategy to give attorneys upper hand